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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,564	08/15/2006	Michael Komowski	016906-0509	9060
22428 7590 12/28/2009 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER MILLER, SAMANTHA A	
			ART UNIT 3749	PAPER NUMBER
			MAIL DATE 12/28/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,564

**Applicant(s)**

KOMOWSKI, MICHAEL

**Examiner**

SAMANTHA A. MILLER

**Art Unit**

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, and 10-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS-08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: DE 10031991 English translation

## DETAILED ACTION

### *Response to Amendment*

Receipt of applicant's amendment filed on 8/18/2009 is acknowledged.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over PIERRE (FR 2,771,966) in view of MUELLER (DE10031991).

PIERRE teaches:

1. A circumferential surface (Fig.4) of a part-cylinder, wherein the circumferential surface forms a first region (three surfaces 50, Fig.4), two circle segment surfaces (48 on each side) forming lateral side surfaces of the part-cylinder, wherein each circle segment surface forms a second region (48), an externally surrounding rim (64), which is arranged substantially in two planes (Fig.4), projects outward and serves to bear against correspondingly designed beating surfaces, at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof, and at least one opening (58 and 52) in at least one segment of the first region, one or both of the second regions, or a combination thereof,

wherein the at least one segment is delimited by the externally surrounding rim and the second rim (Fig.4).

2. The second rim is provided in the first region of the drum flap (being between the first and second region).

3. The second rim is provided in the second region (being between the first and second region).

4. The second rim is arranged in a plane in which a pivot axis (from 51) also lies, and projects outward, wherein the plane in which the second rim lies is arranged in an angle between the two planes (90 degree angle) in which the externally surrounding rim is arranged.

6. A circular region having a thickness designed to match the externally surrounding and second rims, is provided in a region of a pivot axis (Fig.4).

10. Two outwardly protruding bearing journals (51) are provided on a pivot axis.

11. An air guidance housing (Fig.3), and a drum flap (40) arranged in the air guidance housing, wherein the drum flap comprises: a circumferential surface of a part-cylinder, wherein the circumferential surface forms a first region (three surfaces 50, Fig.4), two circle segment surfaces forming lateral side surfaces of the part-cylinder, wherein each circle segment surface forms a second region (48 on each side, Fig.4), an externally surrounding rim (64), which is arranged substantially in two planes, projects outward and serves to bear against correspondingly designed bearing surfaces (Fig.4), at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof, and at

least one opening (58, and 52) in at least one segment of the first region, one or both of the second regions, or a combination thereof, wherein the at least one segment is delimited by the externally surrounding rim and the second rim.

12. The drum flap serves as an air distributor flap and/or as a temperature mixing flap (English Abstract).

PIERRE teaches the invention as discussed above; however PIERRE does not teach an externally surrounding rim or second rim that projects perpendicularly outward from the circumferential surface; a third region; or a intermediate region.

MUELLER teaches:

Regarding claims 1, 11, 13, 17, and 21; an externally surrounding rim (14 surrounding 12), projects perpendicularly outward from the circumferential surface (arch of each 12) along two edges (on each side) of the circumferential surface that run along a longitudinal direction of the circumferential surface, at least a second rim (17 extending to edges of 12) projecting perpendicularly outward from the circumferential surface (arch of each 12) (Fig.7).

Regarding claims 13-21; a third region (where 17 meets the space between 12 and 12), wherein the second rim runs substantially around the third region, and a planar intermediate region (center region between 12 and 12) arranged at an angle not equal to 180° from the third region (where 17 meets the space between 12 and 12, being arched), wherein the third region indirectly adjoins a lateral surface in a region of the externally surrounding rim via the intermediate region (Fig.7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the valve of PIERRE in view of the third region of MUELLER in order to stop the rotation of the valve and in order to make possible also a lateral air circulation and seal (MUELLER Fig.7 and p.2 last paragraph).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 6, and 10-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR '1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272-9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samantha Miller  
Examiner  
Art Unit 3749  
12/21/2009

/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749